

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4776**

BY DELEGATES CAPITO, YOUNG, KESSINGER, PACK,

STORCH, AND BATES

[Introduced February 15, 2022; Referred to the  
Committee on Health and Human Resources then  
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §21-5J-1, §21-5J-2, §21-5J-3, §21-5J-4, §21-5J-5, §21-5J-6, §21-5J-7, §21-  
3 5J-8, §21-5J-9, and §21-5J-10, all relating to creating a paid parental leave pilot program;  
4 providing findings and purpose; definitions; paid parental leave and requirements for  
5 claiming benefits; requiring employer to continue group health insurance coverage for  
6 employee; employment benefits and seniority position upon return from leave; benefits not  
7 to accrue during period of leave; employers required to respond to survey to Department  
8 of Labor; requiring department to report to Joint Committee on Government Organization;  
9 authorizing emergency rulemaking authority; and providing December 31, 2026, sunset.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 5J. PAID PARENTAL LEAVE PILOT PROGRAM.**

### **§21-5J-1. Legislative findings; purpose.**

1 (a) The Legislature recognizes that the birth or adoption of a child is a significant life event  
2 which poses unique challenges for working families.

3 (b) The purpose of the pilot program established in this article is to determine the viability  
4 of paid parental leave for state employees as a means of promoting working families' physical  
5 and mental health, increasing employee retention, and improving employee productivity and  
6 morale following the birth or adoption of a child.

### **§21-5J-2. Definitions.**

1 As used in this article:

2 "Child" means an individual under the age of 12 who is the biological or adopted child of  
3 an employee. "Child" does not include a child who is the biological, adopted, or foster child,  
4 stepchild, or legal ward of the employee's spouse but not the employee prior to his or her marriage  
5 to the employee, and who is adopted by the employee following the marriage.

6 "Department" means the Department of Labor.

7 "Employee" means any individual engaged in full-time permanent employment, who has

8 worked for at least 12 consecutive weeks performing services for remuneration for any  
9 department, division, board, bureau, agency, commission, or other unit of state government prior  
10 to filing a claim under this article. “Employee” does not include:

11 (1) An individual employed by a person who is not an “employer” as defined by this article;

12 (2) An individual holding an elected public office;

13 (3) A part-time employee; or

14 (4) A person in a vocational rehabilitation facility certified under federal law who has been  
15 designated an evaluatee, trainee, or work activity client.

16 “Employer” includes any department, division, board, bureau, agency, commission, or  
17 other unit of state government. “Employer” does not include a county, municipality, or any unit  
18 thereof, or a county board of education.

19 “Employment benefits” means all benefits, other than salary or wages, provided or made  
20 available to employees by an employer, and includes group life insurance, health insurance,  
21 disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of  
22 whether such benefits are provided by a policy or practice of an employer or by an employee  
23 benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

24 “Spouse” means any person legally married to an “employee” covered under this article.

**§21-5J-3. Paid parental leave.**

1 (a) An employee is entitled to a total of 12 weeks of paid leave during any 12-month period  
2 to care for and bond with his or her child during:

3 (1) The first 12 months after the child’s birth, for a child born during the period July 1, 2022,  
4 through July 1, 2025.

5 (2) The first 12 months after adoption of a child which occurs during the period July 1,  
6 2022, through July 1, 2025.

7 (b) The paid leave provided under this article is in addition to accrued annual or sick leave.

8 (c) An employee who takes paid leave under this article forfeits his or her right to take

9 unpaid leave under §21-5D-4(a)(1) or §21-5D-4(a)(2) of this code during any 12-month period  
10 beginning on July 1, 2022.

11 (d) The paid leave provided under this article may be combined with the unpaid parental  
12 leave provided under §21-5D-4(a)(3) of this code for a maximum duration of 18 weeks of paid  
13 and unpaid leave per 12 months beginning on July 1, 2022.

14 (e) An employee may not take leave under this section intermittently or on a reduced leave  
15 schedule unless the employee and the employer agree otherwise.

16 (f) An employee taking leave under this article is entitled to receive a weekly benefit of 90  
17 percent of his or her average weekly wage, up to a maximum of \$1,000 per week, while on leave  
18 pursuant to this section.

**§21-5J-4. Filing a claim for benefits; notification of eligibility or ineligibility; payment of**  
**benefits.**

1 (a) To receive benefits under this article, an employee may file a claim with his or her  
2 employer in a form and manner required by the department, and shall include the following  
3 documentation supporting the request for leave:

4 (1) For birth, the child's birth certificate.

5 (2) For adoption, the child's new adoption birth certificate or decree of adoption by a court  
6 of competent jurisdiction.

7 (b) The employer shall submit all claims to the department within three business days of  
8 receipt.

9 (c) The department shall notify the employer and the employee of the employee's eligibility  
10 or ineligibility for benefits under this article within seven days of receiving a claim.

11 (d) If an employee is ineligible, the department shall specify the reason for ineligibility.

12 (e) Payment of benefits to the employee shall be prorated to the date of eligibility.

**§21-5J-5. Paid parental leave pilot program fund.**

1 (a) There is hereby created in the State Treasury a special revenue account to be known

2 as the Paid Parental Leave Pilot Program Fund. The fund shall be administered by the  
3 department. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of  
4 this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;  
5 any moneys appropriated and designated for the fund by the Legislature; any moneys able to be  
6 transferred into the fund by authority of the commissioner from other funds; and gifts, donations,  
7 and interest or other returns earned from investment of the fund.

8 (b) Expenditures from the fund shall be for the purpose of paying benefits to eligible  
9 employees under this article, and are not authorized from collections, but are to be made only in  
10 accordance with appropriations by the Legislature and in accordance with of §12-3-1 et seq. of  
11 this code and upon the fulfillment of the provisions set forth in §11B-2-1 et seq. of this code.

12 (c) Any balance, including accrued interest and other returns, remaining in the fund on  
13 December 31, 2026, shall revert to the General Revenue Fund.

**§21-5J-6. Group health coverage; position upon return from leave; employment benefits  
and seniority.**

1 (a) During any leave taken by an employee under this article, the employer shall continue  
2 group health insurance coverage for the employee: *Provided*, That the employee shall pay to the  
3 employer the premium costs of such group health insurance coverage attributable to the  
4 employee.

5 (b) The position held by the employee immediately before leave taken under this article is  
6 commenced shall be held for a period not to exceed the 12-week period of the leave, or 18-week  
7 period of the combined leave under §21-5J-3(d) of this code, and the employee shall be returned  
8 to that position: *Provided*, That the employer may employ a temporary employee or temporary  
9 employees to fill said position for the period of the leave taken under this article.

10 (c) No employer may, because an employee received leave under this article, reduce or  
11 deny any employment benefit or seniority which accrued to the employee before his or her leave  
12 commenced or during such leave.

**§21-5J-7. Employer survey.**

1           (a) On July 1, 2024, and each year thereafter, the department shall survey each employer  
2 to which a claim has been submitted in a form and manner required by the department which  
3 includes the following information for each eligible employee who took leave under this article in  
4 the preceding 12 months:

5           (1) The duration of leave taken by the employee under this article;

6           (2) The duration of any leave taken by the employee under §21-5D-1 et seq. of this code;

7           (3) Whether the employer employed a temporary employee or temporary employees to fill  
8 the position of the employee taking leave under this article for the period of the leave;

9           (4) The duration of employment of each such temporary employee;

10          (5) The gross salary paid to each such temporary employee;

11          (6) The type and cost of each additional employee benefit provided to each such  
12 temporary employee.

13          (b) The information collected under this section shall be submitted to the Joint Committee  
14 on Government and Finance on or before August 1, 2024, and each year thereafter.

**§21-5J-8. Performance review.**

1           The department shall report to the Joint Committee on Government Organization on  
2 October 1, 2024, and each year thereafter the findings of the performance review which includes,  
3 at a minimum:

4           (1) An evaluation of the utilization, fiscal impact, and effectiveness of the pilot program;

5           (2) A recommendation as to whether the paid family leave provided under this section  
6 should be continued, reduced, expanded, terminated, or otherwise modified;

7           (3) Any recommended legislation; and

8           (4) Any other issues considered relevant.

**§21-5J-9. Emergency rulemaking authority.**

1           The department may promulgate emergency and legislative rules pursuant to the

2 provisions of §29A-3-1 et seq. of this code to effectuate the provisions of this article.

**§21-5J-10. Sunset.**

1 This article shall be of no further force and effect on December 31, 2026.

NOTE: The purpose of this bill is to create a paid parental leave pilot program.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.